P-999/CI-92-1061 ORDER PERMITTING DISCONTINUANCE OF SERVICE, REQUIRING 30-DAY WAIVER OF NONRECURRING CHARGES, AND REQUIRING ACCESS PLUS TO SHOW CAUSE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of Three Petitions to Discontinue Service to Access Plus

ISSUE DATE: September 4, 1992

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PROCEDURAL HISTORY

I. Proceedings to Date

On August 19, 1992 U S WEST Communications, Inc. (U S WEST), a local exchange carrier, filed an emergency petition stating it intended to disconnect local access service to Access Plus, a long distance carrier, for non-payment of local access charges. U S WEST asked the Commission to find that Commission authorization of disconnection was unnecessary. In the alternative, U S WEST sought Commission permission to disconnect.

On August 26, 1992 Telemanagement Consultants Corporation (TCC) filed a similar petition, stating it intended to disconnect wholesale intrastate transmission service to Access Plus for nonpayment of charges owed. The company requested a finding that Commission approval of disconnection was unnecessary. In the alternative, the Company requested permission to disconnect. The Company also submitted a proposal to provide uninterrupted 1+ long distance service to Access Plus customers until they chose new permanent long distance carriers.

On August 26, 1992 Teleconnect Long Distance Services and Systems Company (Teleconnect) filed a letter stating it intended to disconnect wholesale 800 and Travel Card services to Access Plus for nonpayment of charges owed. Teleconnect, too, requested a finding that Commission approval of disconnection was unnecessary and requested, in the alternative, Commission permission to disconnect. The company proposed to continue providing 800 and Travel Card services to Access Plus customers until they chose new permanent carriers and filed a proposed customer notice for Commission consideration. On August 27, 1992 the company filed a petition formalizing the contents of the letter.

On August 28, 1992 Access Plus's attorney filed a letter stating Teleconnect, a secured creditor, had served on Access Plus a demand for return of collateral, which would effectively transfer all assets of Access Plus to Teleconnect. Access Plus stated it would not appear at the hearing on the three petitions in light of these developments.

On August 28, 1992 the Department of Public Service (the Department) filed its Report and Recommendations on the petitions. The Department urged the Commission to find that Commission authorization was required for each of the proposed disconnections and to permit all three disconnections under specified terms and conditions designed to ensure uninterrupted service to Access Plus customers. The Department also recommended revoking Access Plus's certificate of authority to provide intrastate telecommunications services.

The matter came before the Commission on September 1, 1992. U S WEST, TCC, Teleconnect, and the Department appeared. Access Plus did not appear. The Residential Utilities Division of the Office of the Attorney General appeared to express general concern that the ratepayers of regulated monopolies not bear the financial consequences of business failures by providers of emergingly competitive services.

FINDINGS AND CONCLUSIONS

II. Factual Background

Access Plus is a long distance telecommunications "reseller." It owns very few, if any, of the facilities or equipment necessary to provide telephone service on its own. Under contract, it buys standard 1+ long distance service and billing and collection service from TCC. Under contract, it buys 800 and Travel Card service from Teleconnect. It resells 1+, 800, and Travel Card services to residential and business customers, incurring local access charges under the tariffs of the local exchange carriers serving these customers and under the tariffs of the local exchange carriers serving the persons to whom these customers place long distance calls.

TCC, Teleconnect, and U S WEST claim Access Plus has defaulted on payments required under its contracts with TCC and Teleconnect, and on payments required under the local access tariffs of U S WEST. The Company states it will not appear in this proceeding to dispute those claims or to oppose the companies' proposals to disconnect service. The Commission accepts as true for purposes of this proceeding the claims that Access Plus has defaulted on payments required under its contracts with TCC and Teleconnect and under U S WEST's local access tariffs.

III. Summary of the Issues and Commission Action

The threshold issue in this case is whether Commission authorization is required for any of the three companies to disconnect service to Access Plus. The remaining issues are whether disconnection is appropriate, whether TCC's and Teleconnect's plans to provide uninterrupted service to Access Plus customers should be approved, and whether Access Plus's certificate of authority should be revoked.

The Commission finds that none of the three companies proposing to disconnect service to Access Plus may do so without Commission authorization under Minn. Stat. § 237.12. subd. 2 (1990). The Commission finds that disconnection is appropriate and will not harm the public interest. The Commission will authorize disconnection under the terms and conditions proposed by TCC and Teleconnect, with minor modifications. The Commission will require Access Plus to show cause why its certificate of authority to provide intrastate telecommunications service should not be revoked.

These issues will be addressed in turn.

IV. Commission Authorization of Disconnection Required and Granted

The statutory provision governing disconnection of service between telephone companies reads as follows:

> Wherever a physical connection or connections exist between any telephone exchange system operated by a telephone company and the toll line or lines operated by another telephone company or between its toll line or lines and the telephone exchange system of another telephone company, or between its toll line and the toll line of another telephone company, neither of the companies shall cause such connection to be severed or the service between the companies to be discontinued without first obtaining an order from the commission upon an application for permission to discontinue such

> physical connection. Upon the filing of an application for discontinuance of such a connection, the department shall investigate and ascertain whether public convenience requires the continuance of such physical connection, and if the department so finds, the commission shall fix the compensation, terms, and conditions of the continuance of the physical connection and service between the telephone companies.
>
> Minn. Stat. § 237.12, subd. 2 (1990).

A. The Effect of the Statute on U S WEST

U S WEST contends that the statutory provision does not apply to its connection with Access Plus for two reasons: 1. as a reseller, Access Plus does not own the facilities by which its customers are connected with U S WEST exchanges, and 2. in the new telecommunications environment created by long distance competition, the public interest does not require Commission action before local exchange carriers deny local access to interexchange carriers. The Commission rejects both arguments.

First, Access Plus clearly has physical connections with U S WEST. The fact that those connections are provided under contract through facilities and equipment owned by other companies does not change the fact that physical connections exist. The statute therefore requires Commission approval before those connections are discontinued.

Second, the Commission does not agree that long distance competition has eliminated the public interest in ensuring that local exchange carriers do not deny local access to long distance carriers without Commission approval. While it is true that most Access Plus customers would have access to other long distance carriers if Access Plus were disconnected, these customers would need operator assistance or a sophisticated understanding of modern telecommunications to obtain it. Most of them would not know the dialing codes necessary to use other long distance carriers. Most of them would not have current, accurate information on the rates of other long distance carriers. In short, Access Plus customers would be confused and inconvenienced unless disconnection were preceded by notice and an explanation of how to ensure uninterrupted long distance service at known rates using known dialing codes.

The Commission believes the purposes of the statute and Commission regulation go beyond preventing total inability to make long distance telephone calls. Those purposes include ensuring that the public can depend on long distance service being provided in a predictable, understandable manner. The Commission's longstanding commitment to avoiding customer confusion applies to long distance as well as local service.

B. The Effect of the Statute on TCC

TCC claimed requiring Commission approval for long distance wholesalers to terminate connections with long distance retailers could chill the development of long distance competition in Minnesota and crowd the Commission's docket with such requests. The Commission disagrees. For wholesalers, seeking Commission approval before disconnecting resellers should be nothing more than an inconvenience. The Commission can and does act quickly on such requests. Assuming wholesalers monitor retailers' performance under their contracts, petitions to disconnect should be filed and acted upon promptly, with minimal inconvenience to wholesalers.

Furthermore, TCC's contention that disconnection petitions could crowd the Commission's docket is good reason to require Commission approval before disconnection. If long distance resellers started failing on that scale, it would be important for the Commission to know and to take action to ensure that remaining resellers had the financial and managerial stability to provide safe and reliable service to the public.

C. The Effect of the Statute on Teleconnect

Teleconnect argued that the disconnection statute does not apply to the connections it provides Access Plus because Access Plus has no facilities or equipment of its own and because the two companies are not in the local exchange company/long distance carrier relationship dealt with in the statute. The Commission has already rejected the first argument in section IV. A. The Commission rejects the second argument as well.

The Commission reads Minn. Stat. §237.12, subd. 2 as requiring Commission approval before any connections between toll carriers and local exchange carriers can be severed. Teleconnect proposes to sever the connection of Access Plus, a toll carrier, with U S WEST, a local exchange carrier. That requires Commission approval.

V. Proposals to Continue Service to Access Plus Customers

Both TCC and Teleconnect have filed proposals to continue serving, as retailers, the Access Plus customers they have been serving as wholesalers. Both plans will ensure uninterrupted, high quality service to Access Plus customers at reasonable rates.

Teleconnect's plan was straightforward and unopposed by any party. It will be approved in its entirety, including the text of the customer notice proposed by the Company.

U S WEST opposed one feature of TCC's plan, its request that local exchange carriers waive nonrecurring charges associated with TCC's assumption of Access Plus's customer base during a 90-day transition period. TCC argued it did not expect to retain all Access Plus customers, it was performing a public service by providing a smooth transition period, and it should not have to pay set-up charges for facilities it would not need permanently. U S WEST argued its ratepayers were not responsible for incurring these costs and should not be required to bear them. The Department argued that the public interest in assuring uninterrupted service to Access Plus customers justified requiring limited waiver of nonrecurring charges, and suggested 30 days as a reasonable transition period.

The Commission agrees with the Department. Although U S WEST is not the cost-causer in this case, neither is TCC. If uninterrupted service is to be provided to Access Plus customers, transition costs will have to be apportioned between non-cost causers. TCC's plan, modified to provide a 30-day transition period, appears to be the most equitable method of doing this.

Under that plan, TCC will incur the costs of providing temporary service to customers outside its service area and to customers who will eventually choose other carriers. It would be inequitable to require TCC to pay the full nonrecurring costs associated with this temporary service. At the same time, the local exchange carriers are already providing, to Access Plus, the equipment and facilities TCC will need to continue providing service. They can provide those facilities to TCC instead without significant cost. Reliable long distance service benefits local exchange carriers as well as the public, and it is reasonable to require local exchange carriers to waive nonrecurring charges to TCC for the first 30 days it serves Access Plus's customer base.

The Commission notes that TCC has concurred in the Department's proposal to modify its transition plan to limit its ability to reject customers for credit reasons to customers who have been issued a disconnection notice under the Commission's customer service rules. The Commission agrees this is an important consumer protection that should be incorporated into the transition plan. Similarly, the Commission agrees that TCC should submit its customer notice to Commission staff for prior review and approval.

VI. All Local Exchange Carriers May Disconnect

Since TCC and Teleconnect are authorized under this Order to serve Access Plus customers until they can choose permanent service providers, it would serve no purpose to require other local exchange carriers to file petitions for permission to discontinue their connections with Access Plus. The Commission will therefore authorize all local exchange carriers to discontinue their connections with Access Plus as soon as they have processed changes of Primary Interexchange Carrier (PIC's) for all Access Plus customers.

VII. Access Plus to Show Cause

Clearly, there is reason to question whether Access Plus should remain an authorized provider of telecommunications service within the state of Minnesota. The Commission will therefore require Access Plus to show cause why its certificate of authority should not be revoked under Minn. Stat. § 237.16, subd. 5 (1990) for failure to provide reasonably adequate service.

ORDER

1. All local exchange carriers may terminate their connections with and service to Access Plus as soon as they have processed changes of Primary Interexchange Carrier (PIC's) for all Access Plus customers within their exchanges.

2. The plans to continue uninterrupted service to Access Plus customers filed by Teleconnect and TCC are accepted, as modified herein.

3. All local exchange carriers shall waive nonrecurring charges associated with TCC's assumption of Access Plus's customer base for a transition period of 30 days from the date of this Order.

4. Within 20 days of the date of this Order, Access Plus shall show cause why its certificate of authority should not be revoked under Minn. Stat. § 237.16, subd. 5 (1990) for failure to provide reasonably adequate telephone service.

5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)